IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 976 OF 2003

IN

SUM. SUIT NO. 2571 OF 2003

Rohit M. Udani (H.U.F.) .. Plaintiff

vs.

Deepak R. Shah .. Defendant.

Mr. Jayesh Somaiya i/by Bharat & Co.

for plaintiff.

Mr. Virendra Saraf i/by Kiran Jain & Co.

for defendant.

CORAM : S.U. KAMDAR, J.

DATE : 16th August, 2005.

P.C.

. Delay, if any, in filing the affidavit in reply is condoned. Affidavit in reply is taken on record. The learned counsel for the plaintiff has proceeded on the basis of denials since he is not able to file rejoinder to the affidavit in reply which is taken on record.

2. The present suit is filed on the basis of a dishonoured cheque for the sum of Rs. 1,50,000/-. The cheque is at Exhibit A to the plaint. In so far as the said cheque is concerned, it is an admitted position that the said cheque has been signed by the defendant and handed over to the plaintiff. It is also an admitted position that the said cheque has been dishonoured. However, the learned counsel appearing for the defendant has placed before me the following defences.

i) Firstly it has been contended that the present suit is not by HUF and verification clause of the said plaint is not in accordance with the provisions of the Civil Procedure Code. I am not inclined to accept the aforesaid contention at this stage. The suit is filed by Rohit M. Udani representing the HUF and he has verified the said plaint. Prima facie, in my opinion, the suit is maintainable.

ii) The second contention raised is that this Court has no jurisdiction to entertain and try the present suit as the cheque is being issued from the State of Gujarat though the said cheque is admittedly dishonoured within the territorial jurisdiction of this Court. It has been contended that it was incumbent upon the plaintiff to obtain leave under clause 12 of the Letters Patent before

filing the present suit and in the absence of leave under clause 12 the suit is not maintainable. In K. Bhaskaran vs. Sankaran Vaidhyan Balan and Anr. reported in (1999) 7 SCC 510 the Supreme Court has held that in case of a dishonoured cheque where the cheque is dishonoured that Court shall have jurisdiction to entertain and try the suit.

iii) Thereafter the learned counsel has contended that on the same cheque a company petition was filed by the plaintiff in the Court of Gujarat at Ahmedabad being Company Petition No. 65 of 2002 and by an order dated 21.4.2003 the Gujarat High Court has dismissed the said company petition. It has been further contended that in view of the said order passed by the learned Single Judge of the Gujarat High Court in Company Petition, the present suit also is in fact liable to be dismissed and as such an unconditional leave to defend should be granted. The learned counsel for the defendant has contended that the cheque though issued and duly signed by the defendant, the same was issued in blank to the plaintiff who was his chartered accountant and the chartered accountant has misused the said cheque by entering his own name and seeking to recover the amount under the said cheque. In my opinion, in so far as the company petition is concerned, apart from the fact that the said order is not binding on me, it is now well settled law

that the jurisdiction of this Court while determining the summons for judgment is independent and the company petition which is a proceeding in rem and the orders passed in company petition cannot be taken into consideration while determining the issues which are raised before the Court in summons for judgment. The aforesaid position in law is now well settled. In the aforesaid circumstances, I am not inclined to accept the contention that merely because the company petition is dismissed on the same cheque, the present summons for judgment should also be dismissed and unconditional leave to defend should be granted.

3. In the aforesaid circumstances, I find that the defences raised are totally bogus and without any merit. Under the Negotiable Instruments Act, the bill of exchange or a dishonoured cheque is a prima facie proof of consideration and the consideration is presumed in respect of the said negotiable instrument. Though it is undoubtedly true that the said presumption is rebuttable, the said situation will arise only when the trial is effected. Mere the defence that the cheque was issued in blank and, therefore, there is no liability to pay is in my opinion a totally moon shine and bogus defence.

4. The learned counsel for the defendant has

also relied upon a judgment of the Calcutta High Court in the case of Jamunadhar Poddar Firm vs. Jamunaram Bhakat and others, reported in AIR (31) 1944 Calcutta 138 in respect of the maintainability of the suit. The learned counsel for the defendant has also relied upon a judgment of the Patna High court in the case of R.J. Mohammed Yakub, Saheb vs. M/s. Dipa Sahu Deoki Prasad and others, reported in AIR 1959 Patna 200. In my opinion, in the view I have taken above, these judgments have no application.

5. The learned counsel for the defendant has also contended that the cheque is issued without consideration and, therefore, the same is not binding. In my opinion, as stated hereinabove, it is not permissible for the defendant to contend once having issued the cheque that the same is without consideration.

6. In view of the aforesaid I find that the defendant should deposit an amount of Rs. 1,99,500/- in this Court within a period of four weeks from today failing which the plaintiff will be entitled to decree. In an event the deposit is made, Suit to be transferred to the list of Commercial Causes. Written Statement or points of defence to be filed four weeks from today. Affidavits list of documents to be filed within four

weeks thereafter. Inspection within four weeks thereafter. Suit to be on Board of the learned Judge taking Commercial Causes.